

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 28 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DOUGLAS S. VAN RAAM,)	2 CA-CV 2009-0178
)	DEPARTMENT B
Petitioner/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
DORA L. NICHOLS,)	Appellate Procedure
)	
Respondent/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause No. DO2009269

Honorable D. Corey Sanders, Judge Pro Tempore

AFFIRMED

Douglas S. Van Raam

Prescott
In Propria Persona

K E L L Y, Judge.

¶1 Appellant Douglas Van Raam appeals from the trial court's orders establishing his paternity of an infant child and awarding custody of the child to appellee Dora Nichols, the child's mother. Finding no abuse of discretion, we affirm.

Background

¶2 In July 2009, Douglas petitioned to establish his paternity of an infant born in June 2009. He claimed he had engaged in sexual intercourse with Dora, who had “originally told [him] that [he] was the father.” Another man had signed the child’s birth certificate as the father. Douglas requested a DNA¹ test and sought sole custody of the child.

¶3 After a hearing, the trial court found the man who had signed the child’s birth certificate was “not the biological father” and “disestablish[ed] that paternity.” It also found “by stipulation of the parties” that Douglas was the biological father of the child. The court then set an evidentiary hearing to determine custody. Following the custody hearing, the court ruled it was in the child’s best interest that Dora be awarded sole legal custody. It granted Douglas four hours’ parenting time once a week. At Dora’s request, no child support was ordered. This appeal followed.

Discussion

¶4 Douglas argues the trial court erred in awarding custody of the child to Dora. He maintains it was in the child’s best interest for him to have custody because, inter alia, Dora “is a Felon from theft charges [and] has repeatedly been known to affiliate with violent people.” We note the transcripts of the proceedings have not been made part of the record on appeal. As the appellant, Douglas was obligated to “mak[e] certain the record on appeal contains all transcripts or other documents necessary for us

¹Deoxyribonucleic acid.

to consider the issues raised.” *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995); *see also* Ariz. R. Civ. App. P. 11(b). In the absence of the transcripts, we will presume they support the trial court’s factual findings and rulings, *Kohler v. Kohler*, 211 Ariz. 106, n.1, 118 P.3d 621, 623 n.1 (App. 2005), and we address Douglas’s claims accordingly.²

¶5 In deciding child custody issues, “[t]he trial court is given broad discretion in determining what will be the most beneficial for the child[], and it is in the best position to determine what is in the child[]’s interest.” *Porter v. Porter*, 21 Ariz. App. 300, 302, 518 P.2d 1017, 1019 (1974) (citation omitted). We therefore review the court’s custody and parenting-time decisions for an abuse of discretion. *Owen v. Blackhawk*, 206 Ariz. 418, ¶ 7, 79 P.3d 667, 669 (App. 2003). We will not disturb those decisions unless it clearly appears that the court has mistaken or ignored the evidence. *Armer v. Armer*, 105 Ariz. 284, 289, 463 P.2d 818, 823 (1970). For this court to hold that there has been an abuse of discretion, “the record must be devoid of competent evidence to support the decision of the trial court.” *Borg v. Borg*, 3 Ariz. App. 274, 277, 413 P.2d 784, 787 (1966), *quoting Fought v. Fought*, 94 Ariz. 187, 188, 382 P.2d 667, 668 (1963).

¶6 “Arizona’s public policy makes the best interests of the child the primary consideration in awarding child custody.” *Downs v. Scheffler*, 206 Ariz. 496, ¶ 7, 80

²Dora failed to file an answering brief that complied with the rules of civil appellate procedure. “[W]here an appellant raises debatable issues, the appellee’s failure to file an answering brief constitutes reversible error.” *In re Guardianship of Cruz*, 154 Ariz. 184, 185, 741 P.2d 317, 318 (App. 1987). But, given Douglas’s failure to provide this court with transcripts of the proceedings below, we cannot say he has raised debatable issues meriting the application of this rule.

P.3d 775, 778 (App. 2003). Section 25-403(A), A.R.S., provides that, in determining the child's best interests, the court must "consider all relevant factors," including: (1) the parents' wishes; (2) the child's wishes; (3) the child's relationship with his parents, siblings, and other persons "who may significantly affect the child's best interest"; (4) "[t]he child's adjustment to home, school and community"; (5) "[t]he mental and physical health of all persons involved"; (6) "[w]hich parent is more likely to allow the child frequent and meaningful continuing contact with the other"; (7) "[w]hether one parent, both parents or neither parent has provided primary care of the child"; (8) "[t]he nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody"; and (9) whether a parent has complied with domestic education program requirements.

¶7 Douglas argues it was in the child's best interest for him to have custody rather than Dora. Without a transcript of the trial, however, we must assume that the evidence presented to the court was sufficient to support its findings. *Kohler*, 211 Ariz. 106, n.1, 118 P.3d at 623 n.1. We therefore cannot say the court abused its discretion in finding it was in the child's best interest to remain in Dora's custody. *See Owen*, 206 Ariz. 418, ¶ 7, 79 P.3d at 669.

¶8 Douglas further contends Dora was not entitled to custody under A.R.S. §§ 25-403.03, 25-403.04, and 25-403.05, which govern custody determinations when a parent has engaged in domestic violence, drug abuse, or sexual offenses. But, again, in the absence of a transcript, we must assume the evidence supported the trial court's

implicit conclusion that Dora was not barred from having custody under any of these statutes. *See Kohler*, 211 Ariz. 106, n.1, 118 P.3d at 623 n.1.

¶9 Douglas also maintains the trial court erred when it did not order a DNA test, as he had requested, before declaring him the biological father of the child. But the court's ruling states Douglas stipulated to paternity. And, in any event, in the absence of a transcript of the paternity hearing, we must assume the evidence presented to the court supported its ruling. *See id.*

Disposition

¶10 The judgment of the trial court is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge